

**SEP 25 2003**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON  
U.S. COURT OF APPEALS**

JAMES F. JONES,

Plaintiff - Appellant,

v.

NATIONAL AERONAUTICS AND SPACE  
ADMINISTRATION; SEAN O'KEEFE,  
Administrator of NASA,

Defendants - Appellees.

No. 03-15080

D.C. No. CV-01-20721-PVT

**AMENDED  
MEMORANDUM\***

Appeal from the United States District Court  
for the Northern District of California  
Patricia V. Trumbull, Magistrate Judge, Presiding

Submitted April 30, 2003\*\*

Before: SKOPIL, FERGUSON, and BOOCHEVER, Circuit Judges.

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

James F. Jones appeals from the district court's grant of summary judgment to Sean O'Keefe, the administrator of the National Aeronautics and Space Administration, in his employment discrimination suit. We have jurisdiction under 28 U.S.C. § 1291, and we reverse and remand.<sup>1</sup>

The district court concluded that Jones had not timely exhausted his administrative remedies, because he did not notify the Equal Employment Opportunities Commission that he intended to reinstate his complaint within thirty days of when Jones became aware that the defendants breached the settlement agreement. See 29 C.F.R. § 1614.504. It is a disputed question of fact whether Jones knew or should have known of the alleged breach in July 2000, when Jones learned that the personnel office at Ames Research Center reacted negatively to the mention of his name, or on September 28, 2000, when he was not offered a permanent position at Ames. This disputed factual issue cannot be resolved at summary judgment.

The district court also held that it was a question of fact whether Jones's post traumatic stress disorder ("PTSD") prevented him from being capable of

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<sup>1</sup> Jones does not challenge the district court's grant of summary judgment to defendant NASA, which is not a proper party. See 42 U.S.C. § 2000e-16(c) (head of agency is proper defendant in civil action alleging employment discrimination by the government).

entering into the settlement agreement on June 22, 2000, but that it was undisputed that Jones ratified the agreement by accepting his remaining two monthly payments. Jones's statements that he started to understand the agreement and that his PTSD improved after he left Dryden Flight Research Center do not establish as a matter of law that he was fully capable of understanding the settlement agreement. Further, his acceptance of the paychecks, which he was entitled to under the Presidential Management Intern program and which are not mentioned in the settlement agreement, does not establish ratification of the agreement.

We therefore reverse the grant of summary judgment and remand to the district court.

REVERSED.